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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,931	04/28/2005	Andrew Butterworth	STHP-018	5683

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EXAMINER
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ROGERS, KRISTIN D

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/507,931	<b>Applicant(s)</b> BUTTERWORTH, ANDREW	
	<b>Examiner</b> Kristin D. Rogers	<b>Art Unit</b> 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.  
4a) Of the above claim(s) 4-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4-21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Specification***

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The use of the trademark PYROLITE, iButton, and TINY TALK has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

### ***Claim Objections***

Claims 16-21 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only, and/or cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 16-21 have not been further treated on the merits.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishimura (5137028). In regard to claim 1, Nishimura shows a vaginal indwelling thermometer in which the thermometer comprises temperature sensing means 1, signal means 38, a micro-computer to store temperature data 32, and a mechanical tone indication. In regard to claim 2, the signal is a buzzer or alarm 38 (column 3, lines 35-41). In regard to claim 3, the temperature sensing means is electronic (See Figures 1 and 2). In regard to claim 4, Nishimura shows an indwelling thermometer in which the temperature sensing means comprises a printed circuit board (Figure 2). In regard to claim 5, Nishimura shows an enclosed hollow container having two chambers (cylindrical end at 30 and cylindrical end at 30S) and a waisted portion (base near 30S). In regard to claim 6, Nishimura shows the temperature sensing means contained in the waisted portion of the thermometer (Figure 2). The Examiner is taking the temperature sensing means to include the circuitry that is contained in the waisted base portion near 30S. In regard to claim 9, the thermometer data relates to temperatures below and above a threshold temperature (column 6 lines 47-66). In regard to claims 10 and 11,

Art Unit: 3736

the microcomputer 31 contained in the thermometer determines the predetermined threshold (column 6 lines 67 to column 7 line 30).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura in view of Nollen (3895523). Nishimura shows a vaginal indwelling thermometer but lacks temperature sensing means comprising a wax with a melting point close to the temperature threshold or a signal means consisting of a dye. Nollen teaches a disposable thermometer that includes dye and Vaseline (wax or grease) that is released at a predetermined temperature. Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Nishimura with dye and a grease such as Vaseline as taught by Nollen for an indication that a predetermined temperature threshold was sensed.

8. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura in view of Hof et al. (4345470). In regard to claims 12 and 13, Nishimura shows a vaginal indwelling thermometer but lacks disclosure of the material from which the thermometer is made and a thermochromatic temperature sensing means. Hof et al. teaches a thermometer made from plastic and further comprising an

Art Unit: 3736

opaque indicator means "C" that is heat-sensitive and changes color in response to temperature changes and upon change of temperature the color change remains (abstract and claims 2-4). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Nishimura with a thermochromatic temperature sensing means as taught by Hof et al. for an indication that a predetermined temperature threshold was sensed.

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura in view of Weiland (5499631). Nishimura shows a vaginal indwelling thermometer but lacks more than one temperature sensing means. Weiland teaches a vaginal indwelling thermometer with multiple temperature sensing elements 3 (Figure 1 and claim 17) for detecting temperature. Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Nishimura with a kit of multiple temperature sensing means as taught by Weiland for temperature detection.

10. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura in view of Weiland and further in view of Nollen. Nishimura shows a vaginal indwelling thermometer but lacks disclosure of a kit of thermometers that sense temperature over a predetermined range. Weiland teaches a kit of thermometers, but lacks disclosure of the temperature range in which the thermometers sense a change in temperature. Nollen teaches a thermometer consisting of multiple temperature sensing capsules that are released at predetermined temperatures ranging from 37 degree Celsius to 40 degree Celsius. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to modify Nishimura with a kit of

Art Unit: 3736


thermometers that sensed temperature changes over a predetermined range of temperatures as taught by Weiland and Nollen for detecting changes in body temperature indicating ovulation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristin D. Rogers whose telephone number is 571.272.7293. The examiner can normally be reached on Monday through Friday 8:00am - 4:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571.272.4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KDR

  
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